

Re: File No. S7-16-22

Commissioners,

Please consider the following comments on the Investment Company Names proposing release. As background, I am a retired securities law attorney and now serve as an investor advocate.

I agree with several aspects of the Names Rule, but am concerned that it goes too far and lacks clarity as to whether a fund's investments has sufficient nexus to the term used in its name.

I support:

- Extending the 80% test to strategies including ESG.
- Requiring non-traded funds to establish a fundamental 80% policy.
- The treatment of derivatives under the proposal.
- Limiting temporary defensive positions.
- No longer prescribing that the 80% test is a time on investment test (but see thoughts on that below).
- Updating the delivery requirement of the notice.
- A fund's name change should also trigger a notice requirement.
- I agree that funds should not be permitted to use names such as "and income" to escape the names rule.

I disagree with:

- The rule is vague as to what kind of an 80% test is adequate. Please provide more guidance around this.
 - Is it purely based on the fund making a finding that the name is accurate? Currently the staff provides many comments in the disclosure review process that clearly management was OK with. What is the roll of the staff in this process and can they hold up acceleration/effectiveness if they disagree with the fund's management?
 - The Commission should lock down that the fortunes of a given investment must be tied to the fund's investment focus (e.g., a 50% assets or revenues test).
 - Can a fund include the largest firms associated with an industry even though it is a

small portion of that firm's business? For example, can a Battery Fund include Walmart and Costco since they are the largest sellers of batteries? I should hope not since the fortunes of these 2 firms are not tied to batteries.

- Index funds should be required to invest 80% of their assets (if not more) in the named index, but separately, if the fund's name suggests a type of investment, the fund must also be 80% investment in the type of investment. This prevents funds from using an index (particularly a bespoke index) as a way around an 80% test.
 - Commission should re-implement the requirement that an index fund maintain a 0.95 correlation coefficient to the index.
- It is unclear what is an investment focus and what is a descriptor of the fund's overall portfolio. For example, does a 'Net Zero Fund' refer to the fund's holdings or the overall portfolio? (e.g., must the fund invest 80% in net zero companies, or must the fund's overall portfolio be net carbon neutral or better?)
- 'Global' should not require an 80% test because it suggests the absence of an investment focus. Also, it is unclear what type of investments could not satisfy a 'Global' test. The current position of investing in 3 different countries and 40% outside the U.S.; or tied to the allocations of a well-established global index seems likely reasonable approaches.
- A time of investment test is not appropriate for the Names Rule, however a daily test is also too much. A 1 time per year test should be used. For example, suppose I am a growth fund. My 80% test is in funds that the adviser believes is poised for growth based on her judgment and a number of enumerated factors. Must the adviser reassess and reanalyze the entire portfolio daily? That seems like a tall ask.
- There are a number of terms that I am not sure how they would be treated so I am hoping the Commission could provide more guidance in this area:
 - Managed risk; managed volatility – Is managed risk a portfolio level characteristic? Would a Managed Risk Equity Fund need 80% in equity?
 - Maturity – Can a long term treasury bond hold a 30-year treasury to maturity or after 20 years is it no longer 'long-term'?
 - Leveraged/Inverse/Defined Outcome – Are these descriptive of holdings or the overall portfolio?
 - Hedged - Does the term "hedge equity" require an 80% test in equity; or can it be 80% in assets that provide exposure to equity or does not provide exposure to equity?
- I am not sure what the special ESG provision does. If ESG is used in a fund's name requires an 80% test, then that special provision should not take effect. A fund that uses ESG in its names and has an 80% must have ESG as a dispositive factor.

- Do not allow funds to use terms like hedged, themed, integration, plus and similar terms to remove funds from an 80% test or to permit a looser 80% test.

Below are some additional thoughts/questions:

- The Commission should better regulate terms that suggest “preservation” or “protection”.
- The Commission should bring more cases under the Names Rule. This will force better discipline.
- Provide a clearer explanation and examples of how to count derivatives exposure. The calculation cannot be principles based. You must provide the exact formula based on figures (items) reported on form N-PORT.
- Must a carbon-free or fossil-fuel free only need to comply with an 80% test or should there be an absolute bar on holding fossil-fuel and carbon investments? The names rule allows 80% in tax-free and not a 100% bar on taxable investments. Does the Commission view fossil fuel-free or carbon-free differently?
- The release is entirely too long and the fact sheet is too short to be useful.
- The new 80% test sounds like it would be a mouthful if fully described in item 4. Does the current formulation used by funds still work? “Under normal circumstances, the fund will invest 80% of its net assets plus borrowings for investment purposes in equity securities.” To explain when a fund can deviate and how to value derivatives does not seem ripe for item 4 disclosure and the language above should still work.
- Do funds need to file a rule 485(a) to come into compliance with the rule amendments? If so, a 18-month compliance period seems appropriate so funds can sync these changes with their annual prospectus updates. Please also consider the burden of updating shareholder reports, prospectus fee and risk information, the names rule, and the ESG rule all coming due at the same time on both funds and your own investment management staff.
- Consider giving funds a one-time pass from the 60-day notice requirement to amend their 80% policy to comply with the new rule so long as the policy is not meaningfully changing.

Sincerely,

Billy Dogwhistle